IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 65 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

SHREE SARVODAYA INDUSTRIES

Appearance:

MR BB NAYAK FOR MR MANISH R BHATT for Applicant.

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 19/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income Tax Appellate Tribunal, Ahmedabad Bench "B" has referred the following two questions for assessment year 1983-84 :

1 "Whether, the Appellate Tribunal is right in law and on facts in confirming the order passed by the CIT(A) holding that the relief under sec.80HH and 80J should be separately allowed ?

2 Whether, the Appellate Tribunal is right in law and on facts in confirming the order passed by the CIT(A), holding that the relief under sec.80HH should be allowed on the gross total income before deducting investment allowance ?"

One more question has also been referred for assessment year 1984-85 and 1985-86 as under :

1 "Whether, the Appellate Tribunal is right in law and on facts in confirming the order passed by the CIT(A) holding that the relief under sec.80HH and 80J should be separately allowed ?"

2 Mr.B.B.Nayak, learned Counsel for the revenue appears for the applicant while respondent, though served is not represented.

3 Question No.1 relatable to assessment year 1983-84, 1984-85 and 1985-86 is common and stands concluded by the decision of this Court in Income Tax Reference No.128 of 1985 dated 14/06/2001. This question is therefore answered following the aforesaid decision of this Court, in the affirmative i.e. in favour of the assessee and against the revenue.

4 In so far as Question No.2 is concerned, the controversy is concluded by the decision of this Court in CIT vs. Amul Transmission Line Hardware Pvt.Ltd. 104 ITR 771, wherein this Court has laid down that the relief under section 80I of the Act is to be allowed after setting off unabsorbed losses, depreciation and development rebate carried forward from earlier years. Applying the ratio of the said decision we hold that the relief u/s.80HH of the Act has to be allowed after deducting investment allowance from the gross total income. Question No.2 for assessment year 1983-84 is therefore answered in the negative i.e. in favour of the

revenue and against the assessee.

5 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt